

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF SOCIAL SERVICES  
DIVISION OF BEHAVIORAL HEALTH**

**Individual Beneficiary/Recipient Agreement  
Between**

Pennington County  
130 Kansas City Street, Suite 230  
Rapid City, SD 57701

State of South Dakota  
Department of Social Services  
DIVISION OF BEHAVIORAL HEALTH  
700 Governors Drive  
Pierre SD 57501-2291

Referred to as Grantee

Referred to as State

The State hereby enters in to an agreement (the "Agreement" hereinafter) for an award of (Federal) and/or (State) financial assistance to a Grantee.

1. Grantee's South Dakota Vendor Number is 12055008 09.
2. PERIOD OF PERFORMANCE:
  - A. This Agreement shall be effective as of April 1, 2021 and shall end on December 31, 2022, unless sooner terminated pursuant to the terms hereof.

B. This Agreement is exempt from the request for proposal process. \_\_\_\_\_

3. BASIS FOR SUBAWARD AMOUNTS:

This grant is made for the purpose of developing and building a crisis stabilization unit to serve as an appropriate regional facility serving western South Dakota as appropriated in Senate Bill 144 of the 2021 Legislative Session: An Act to make an appropriation to provide for a crisis stabilization unit and to declare an emergency.

Amount provided by State/Grantor is	\$4,600,000.00
Amount matched by Grantee	\$
Total Grant Amount	\$4,600,000.00

Dollars provided by State/Grantor consist of the following:

Non-Federal State dollars	\$4,600,000.00
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Federal CFDA #	\$
Grant Name	
Agency/Office	

Other	\$
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4. PROVISIONS (add an addendum if needed):

A. The Grantee agrees to:

1. Develop and build a crisis stabilization unit to serve as an appropriate regional facility serving western South Dakota.
2. Does this Agreement involve Protected Health Information (PHI)? YES ( ) NO (X)  
If PHI is involved, a Business Associate Agreement must be attached and is fully incorporated herein as part of the Agreement (refer to attachment) .
3. Provide documentation of expenditures incurred.

B. The State agrees to:

1. Reimburse for expenses incurred upon submission of an invoice.

6. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding Department of Social Services' rules, regulations and policies to the Grantee and to assist in the correction of problem areas identified by the State's monitoring activities.

7. LICENSING AND STANDARD COMPLIANCE:

The Grantee agrees to comply in full with all applicable requirements of Federal, State, County, City or Tribal statute, regulation or ordinance governing the construction funded by this Agreement. The Grantee will maintain effective internal controls in managing the grant.

8. ASSURANCE REQUIREMENTS:

The Grantee agrees to abide by all applicable provisions of the following assurances: Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension (Executive orders 12549 and 12689) (Debarment and Suspension), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009, as applicable; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

9. COMPLIANCE WITH EXECUTIVE ORDER 2020-01:

By entering into this Agreement, Grantee certifies and agrees that it has not refused to transact business activities, it has not terminated business activities, and it has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott of divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Grantee further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

**10. RETENTION AND INSPECTION OF RECORDS:**

The Grantee agrees to maintain or supervise the maintenance of records necessary for the proper and efficient usage of grant funds, including records and documents regarding bids and bid selection, administrative costs, statistical, fiscal, and other information records necessary for reporting and accountability required by the State. The Grantee shall retain such records for a period of six years from the date of submission of the final expenditure report. If such records are under pending audit, the Grantee agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to usage of grant funds under this Agreement. State Proprietary Information, if any, retained in Grantee's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Grantee's established record retention policies.

All payments to the Grantee by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this Agreement shall be returned to the State within thirty days after written notification to the Grantee.

**11. TERMINATION:**

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Grantee breaches any of the terms or conditions hereof, this Agreement may be terminated by the State for cause at any time, with or without notice. Upon termination of this Agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

**12. FUNDING:**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

**13. ASSIGNMENT AND AMENDMENT:**

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

**14. CONTROLLING LAW:**

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be resolved in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

**15. SUPERCESSION:**

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire Agreement with respect to the subject matter hereof.

**16. SEVERABILITY:**

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

**17. NOTICE:**

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Grantee, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

**18. CONTRACTORS:**

The Grantee will include provisions in contracts using grant funds requiring its contractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Grantee will cause its subcontractors, subgrantees, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

**19. HOLD HARMLESS:**

The Grantee agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Grantee to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

**20. INSURANCE:**

The Grantee, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits listed below. Grantee agrees to provide immediate notice to the State in the event a substantial change in insurance, cancellation or nonrenewal of coverage and provide a new certificate of insurance showing continuous coverage in the amounts required. Grantee shall furnish copies of insurance policies if requested by the State:

- A. Commercial General Liability Insurance with a limit of not less than \$1,000,000;
- B. Automobile Liability Insurance with a limit of not less than \$500,000;
- C. Professional Liability Insurance with a limit of not less than \$1,000,000;
- D. Workers Compensation Insurance as required by South Dakota Law.

**21. TERMS:**

By accepting this Agreement, the Grantee assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written Approval by the State shall be in violation of the terms of this Agreement, and the Agreement shall be subject to termination.

**22. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:**

Grantee certifies, by signing this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or any state or local government department or agency. Grantee further agrees that it will immediately notify the State if during the term of this Agreement it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

**23. CONFLICT OF INTEREST:**

Grantee agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the Grantee expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.

**24. CONFIDENTIALITY OF INFORMATION:**

For the purpose of this paragraph, "State Proprietary Information" shall include all information disclosed to the Grantee by the State. Grantee acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Grantee shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this Agreement; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this Agreement and who have a need to know such information. Grantee is held to the same standard of caring in guarding State Proprietary

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**DSS Agreement #: 22-0851-661**

Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Grantee shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Grantee; (ii) was known to Grantee without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Grantee without the benefit or influence of the State's information; (v) becomes known to Grantee without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Grantee understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, as modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, SDCL 28-1-68 and applicable federal regulation and agrees to immediately notify the State if the information is disclosed, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the Agreement except as required by applicable law or as necessary to carry out the terms of the Agreement or to enforce that party's rights under this Agreement. The State and Grantee acknowledge that the State and its agencies and Grantee are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this Agreement for the State or Grantee to take any action that the State or Grantee reasonably believe is necessary to comply with the South Dakota open records or open meetings laws.

**30. RECIPIENT, SUB-RECIPIENT ATTESTATION:**

By signing this Agreement, Recipient or Sub-recipient attests to the following requirements as set forth in SDCL §1-56-10:

- (A) A conflict of interest policy is enforced within the recipient's or Sub-recipient's organization;
- (B) The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or Sub-recipient's website;
- (C) An effective internal control system is employed by the recipient's or Sub-recipient's organization; and
- (D) If applicable, the recipient or Sub-recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or Sub-recipient's website.

A recipient or Sub-recipient further represents that any and all concerns or issues it had in complying with the foregoing attestations were raised and addressed by the State prior to signing this Agreement.

In the event of a significant change in the conflict of interest policy, recipient or Sub-recipient agrees to provide immediate notice of such change to the State and provide a copy of the new conflict of interest policy. Recipient or Sub-recipient understands that any change in the conflict of interest policy may result in a change in their monitoring or other performance requirements under the grant and expressly agrees to comply with those changes and to facilitate any additional monitoring as required by the State.

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**DSS Agreement #: 22-0851-661**

**31. AUTHORIZED SIGNATURES:**

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

DocuSigned by:  
Gary Drewes 10/19/2021  
1724777478EF406...  
Grantee Signature Date

Gary Drewes

Grantee Printed Name

DocuSigned by:  
Tiffany Wolfgang 10/19/2021  
D7A781CCBA2D433...  
State - DSS Division Director Tiffany Wolfgang Date

DocuSigned by:  
Brenda Tidball-Zeltinger 10/20/2021  
28E0D5995FED422...  
State - DSS Deputy Secretary Brenda Tidball-Zeltinger Date

DocuSigned by:  
Laurie R. Gill 11/2/2021  
08DD8E23C9FF484...  
State - DSS Cabinet Secretary Laurie R. Gill Date

DSS Purchase Order #: 22SC08B661  
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**State Agency Coding:**

CFDA#	_____	_____	_____	_____
Company	1000	_____	_____	_____
Account	52S602000	_____	_____	_____
Center Req	0851093	_____	_____	_____
Center User	_____	_____	_____	_____
Dollar Total	\$4,600,000.00	_____	_____	_____
	_____	_____	_____	_____

DSS Program Contact Person Tiffany Wolfgang  
Phone 605-367-5236

DSS Fiscal Contact Person Contract Accountant  
Phone 605 773-3586

Grantee Program Contact Person Mike Kuhl  
Phone 605-394-2172  
Grantee Program Email Address mikek@pennco.org

Grantee Fiscal Contact Person Cindy Mohler  
Phone 605-721-5593  
Grantee Fiscal Email Address cindym@pennco.org